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सं० 19]

नई दिल्ली, शनिवार, जुलाई 16, 1983/आषाढ़ 25, 1905

No. 19]

NEW DELHI, SATURDAY, JULY 16, 1983/ASADHA 25, 1905

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किये गये आदेश और अधिसूचनाएं
Orders and Notifications issued by General Authorities (other than Administrations of Union Territories)

भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 7 जून, 1983

आ० अ० 57.—निर्वाचन आयोग का समाधान हो गया है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट प्रत्येक निर्वाचन लड़ने वाला अभ्यर्थी स्तम्भ 2 में विनिर्दिष्ट राज्य विधान सभा के लिए उसके नाम के सामने स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से हुए निर्वाचन में जैसा कि उक्त सारणी के स्तम्भ 5 में दर्शाया गया है अपने निर्वाचन व्ययों का लेखा लोक प्रतिनिधित्व अधिनियम और उसके अधीन बनाए गए नियमों द्वारा अपेक्षित समय के अन्दर और रीति से दाखिल करने में असफल रहा है,

और उक्त अभ्यर्थी ने उन्हें सम्यक सूचना दिए जाने पर भी अपनी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है और निर्वाचन आयोग का उनके द्वारा दिए गए आवेदनों पर, यदि कोई हों तो, विचार करने के बाद यह समाधान हो गया है कि उसके पास उक्त असफलता के लिए कोई उपयुक्त कारण या न्यायोचित्य नहीं है;

अतः, अब, उक्त अधिनियम की धारा 10क के अनुसरण में निर्वाचन आयोग घोषणा करता है कि निम्न सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्तियों को संसद के किसी सदन के या राज्य की विधान सभा या विधान परिषद् के सदस्य चुने जाने या होने के लिए इस आदेश की तारीख से 3 वर्ष की कालावधि के लिए निरह किया जाता है

सारणी

क्रम सं०	निर्वाचन के विवरण	निर्वाचन-क्षेत्र की क्रम सं० तथा नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता के लिए कारण
1	2	3	4	5
1.	त्रिपुरा विधान सभा के लिए साधारण निर्वाचन, 1983	8-टाउन बोडोवाली विधान सभा निर्वाचन-क्षेत्र।	श्री तापाश डे, कृष्णनगर, अगरतला, पश्चिम त्रिपुरा।	लेखा दाखिल नहीं किया।
2.	-वही-	22-धानपुर विधान निर्वाचन-क्षेत्र	श्री बाजेन्द्र कुमार घोष गां० महेशपुर, डाकखाना कथालिया, पुलिस स्टेशन जतरापुर, पश्चिम त्रिपुरा	-वही-
3.	-वही-	23-रामचन्द्र घाट (अ० ज० जा०) विधान सभा निर्वाचन-क्षेत्र।	श्री बा थसैलिया मणि जमालिया, खागार बारी, मोहरछारा, त्रिपुरा,	-वही-
4.	-वही-	25-आश्रमबाड़ी (अ० ज० जा०) विधान सभा निर्वाचन-क्षेत्र	श्री किशल्या कान्ती देव बर्मा, 8-कृष्णनगर मार्ग, अगरतला, त्रिपुरा।	-वही-

[सं० 76/त्रिपुरा बि० सं०/83]

आदेश से.

सी० एल० रोज, अवर सचिव

ELECTION COMMISSION OF INDIA

ORDER

New Delhi, the 7th June, 1983

O.N. 57.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of the People/Tripura Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of Elections	Sl. No. and name of Assl. Constituency	Name of the contesting candidates	Reason for Disqualification
1	2	3	4	5
1.	General Election to Tripura Legislative Assembly, 1983	8-Town Bordowali A.C.	Shri Tapash Dey, Krishnanagar, Agartala, West Tripura.	Account not lodged at all.
2.	-do-	22-Dhanpur A.C.	Shri Brajendra Kumar Ghosh Vill. Maheshpur, P.O. Kathalia, P.S. Jatrapur, West Tripura.	-do-
3.	-do-	23-Ramchandraghat (ST) A.C.	Shri Bathsailya Mani Jamatia, Khamar Beri, Moharchhara, Tripura.	-do-
4.	-do-	25-Ashrambari (ST) A.C.	Shri Kishalya Kanti Deb Barma, 8-Krishnanagar Road, Agartala, Tripura.	-do-

[No. 76/T-LA/83]

By Order,

C. L. ROSE, Under Secy.

नई दिल्ली, 28 जून, 1983

आ० अ० 58.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग सन् 1980 की निर्वाचन अर्जी संख्या 6 में दिए गए इलाहाबाद उच्च न्यायालय, के तारीख 5 मई, 1983 का आदेश प्रकाशित करता है

[संख्या 82/उ०प्र०/6/80(इला०)]

आदेश से,

धर्मवीर, अवर सचिव
भारत निर्वाचन आयोग

New Delhi, the 28th June, 1983

O. N. 58.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement dated 5-5-83 of the High Court of Judicature of Allahabad in Election Petition No. 6 of 1980.

[No. 82/UP/6/80(Alld)]

By order,

DHARAM VIR, Under Secy.
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Civil Side

ORIGINAL JURISDICTION

Allahabad, the 5th May, 1983

PRESENT

The Hon'ble K. N. Seth Judge.

Election Petition No. 6 of 1980

Shri Kalp Nath Vs. Jharkhanda Rai and others.

By the Court

The petitioner and the respondents were candidates at the election for the Lok Sabha from 44-Ghosi parliamentary constituency. The respondent No. 1 was declared elected having secured 6296 votes more than the petitioner, his nearest rival. The election of respondent no. 1 has been challenged on the ground that respondent no. 1 and his agents and workers committed corrupt practices under section 123(2), 123(3) and 123(3A) of the Representation of the People Act. Details of the corrupt practices have been set out in paragraphs 8(a) to 8(t) and paragraphs 10(a) and 10(b) of the petition.

Respondent no. 1 filed a written statement and denied the petitioner's allegations.

On the pleadings of the parties the following issue were framed :

1. Whether the respondent no. 1, his agents, workers and other persons with the consent of respondent no. 2 committed the corrupt practice under section 123(2) of the Representation of the People Act ?
2. Whether the respondent no. 1, his agents, workers and others persons, with the consent of respondent no. 1 committed the corrupt practice under section 123(3) of the Representation of the People Act ?
3. Whether the respondent no. 1, his agents, workers and other persons with the consent of respondent no. 1 committed corrupt practice under section 123(3A) of the Representation of the People Act ?
4. Whether the workers and or agents of the election petitioner caused injuries to the workers of the respondent no. 1 and have prevented the voters to exercise their votes in favour of respondent no. 1. If so, its effect ?
5. Whether the provisions of section 81(3) of the Representation of People Act has been complied with. If not, its effect ?
6. To what relief, if any, the petitioner is entitled ?

At the trial learned counsel for the petitioner conceded that there was no material on record to cover issue no. 2 and that issue was not pressed. Issues Nos. 4 and 5 were framed at the instance of the contesting respondents. Learned counsel for respondent no. 1 conceded that there was no material on record covering these issues. These issues were also not pressed.

The fact in support of the plea of undue influence is contained in various sub-paragraphs of paragraph 8. It is alleged that since about 15 days prior to the date of poll it has become clear to the constituency in general and to politically conscious persons including the respondent and their agents and workers that the petitioner was going to win the election. However, in order to ensure his victory respondent no. 1, his agents, workers and supporters with his consent decided that where good polling was expected in favour of the petitioner, they would resort to booth capture, prevent voters from exercising their

right to vote by threatening them or indulging in violence and interrupt the poll. In the villages attached to Lairo polling station a large number of voters were supporters of the petitioner and were expected to vote for him. Sri Kedar Singh, former Block Pramukh Sri Paras, Gram Pradhan and other local communist leaders accompanied the respondent no. 1 when he visited the villages attached to the aforesaid polling station. It is alleged that at about 2 p.m. on the date of the poll, i.e., 3-1-80 a large number of voters had gathered at Lairo polling station and were standing in a queue waiting for their turn to vote when agents and workers of respondent no. 1 came to the polling station. Sri Kedar Singh was armed with a gun and others were armed with lathis. They made enquiries from a couple of persons as to which party was having better votes and when they were informed that Congress (I) party was having an upper hand they started abusing and terrorising the voters and threatened them with dire consequences if they vote in favour of the petitioner. They asked the voters to go back home otherwise they will be gunned down. The voters were then made to run away from the polling station. Kedar Singh and others gave fists blows and slaps to some of the voters and also abused the presiding staff. They also went inside the polling station, beat the Presiding Officer, indulged in violence and created disturbance inside the polling station due to which polling had to be stopped for some time, and most of the voters who had come to the polling stations to cast their votes were prevented from voting. The Presiding Officer lodged a first information report of this incident at police station Kopaganj.

It has further been alleged that Ainul Haq and Anwar Hussain and a number of other Muslims were working for the petitioner. Kedar Singh and Abdul Azwal on 1-1-80 at about 9. a. m. at Chandanpura threatened Ainul Haq and Anwar Hussain that if they worked or voted for the Congress (I) party they shall be beaten and not allowed to live in the locality. On the date of the poll, sensing that most of the voters gathered at polling station Chandanpura were in favour of the petitioner, Iqbal Ahmed, Akhtar Hussain, Kedar Singh, Wasim and others of whom Abdul Awwal and Kedar Singh were armed with guns, threatened the voters and asked them to run away. In view of the threats extended by the said persons a large number of voters went back without casting their votes. It has further been alleged that later in the day due to rush a large number of voters who were present at polling station Chandanpura could not be issued ballot papers by the time the hour for the close of the poll arrived. The Presiding Officer informed the voters that those who had come within the compound of the polling station before the closing hour shall be permitted to cast their votes. Sri Ainul Haq was one of such

voters inside the polling station compound waiting for this turn to vote. At about 7.30 p.m. Iqbal Ahmed, Akhtar Hussain and Kedar Singh arrived there and asked Ainul Haq to stop doing propaganda for the Congress (I) Party failing which he shall be killed. This led to an altercation. Sensing danger to his life Ainul Haq decided to leave the place. He was chased by Kedar Singh and others. Ainul Haq entered the house of Anwar Khan in Chandanpura where upon Kedar Singh and his companions broke open the door of Anwar Khan's house and damaged his property. Ainul Haq somehow managed to escape from the aggressive crowd and lodged a report at Kopaganj police station. Anwar also lodged a report giving out details of the properties looted and damaged.

In sub-paragraphs (q) to (S) of paragraph 8 allegations of intimidation, threats etc. to the voters of Mohalla Qasimpura of Manu Nath Bhanjan have been made but since no evidence was produced in support of these allegations it is not necessary to set out the allegations in details.

In the written statement filed by respondent no. 1 allegations contained in paragraph 8 of the petition have been denied. According to the contesting respondent no. 1 communist party of India had greater hold over the villages attached to the polling station Lairo because of its work and policy and the respondent was well known in that area. During the election period respondent no. 1 addressed two public meetings of Kopaganj which were also addressed by Block Pramukh Kedar Singh. Respondent no. 1 did not visit any village attached to the polling station Lairo during the election period for canvassing or asking for votes in his favour. It is further alleged that Presiding Officer of polling station Lairo in collusion with the petitioner obstructed the voters in exercising their rights and the voters felt agitated but in spite of that the voters exercised their rights in a peaceful manner and no candidate or his agent made any complaint to any authority that the respondent's workers or agents or any person with the consent of respondent no. 1 abused the Presiding Officer or terrorised the voters or beat them. It has also denied that Kedar Singh or any other agent or worker of respondent no. 1 entered the polling station to beat the Presiding Officer or interfered with his duties or any disturbance was created either inside or outside the polling station. Polling was peaceful at the polling station, though the voters of respondent no. 1 were not allowed to exercise their votes in a normal manner due to the collusion of the Presiding Officer with the petitioner. As regards the polling station Chandanpura it has been alleged that Ainul Haq, Rafiq and other workers of the petitioners caused injuries to Chufraan who worked for respondent no. 1 on 3-1-80 about which a report was lodged at police

station Kopaganj and he was also medically examined the same day by the Medical Officer, Kopaganj. The allegation that Kedar Singh and Abdul Awwal asked Ainul Haq and Anwar Hussain not to work for the Congress (I) Party and threatened them has been denied. The reports lodged by Ainul Haq and Anwar were false and were lodged as counter to the report lodged by the respondent's workers. Allegations of threat, intimidation, hearing etc. made against Iqbal Ahmed, Akhtar Hussain, Kedar Singh and others have been denied.

In support of the allegations regarding Lairo polling station the petitioner examined Yudhishter Rai constable (P.W. 3.), Jogendra Nath Tripathi (P.W. 5), A.K. Porwal (P.W. 11), Nanku Yadav (P.W. 16) and Dinesh Singh (P.W. 17). Yudhishter Rai was posted at Lairo polling station. His duty was to make the voters queue up and to maintain law and order. According to him, voting continued peacefully. At 2.30 p.m. some persons entered the polling station and started belabouring the presiding officer and voters started running away from the place. He named only Kedar Singh from amongst the persons who created disturbance. The witness pushed out the persons who were creating disturbances and thereafter no further trouble took place and the voters came back and cast their votes peacefully. In cross-examination he stated that he did not notice Kedar Singh and his companions entering the room where the Presiding Officer was sitting. Jogendra Nath Tripathi (P.W. 5) proved the reports lodged by Ainul Haq, Anwar Hussain and A.K. Porwal on 3-1-80. Ainul Haq, report was lodged at 7.45 p.m. that of Porwal at 8.20 p.m. and that of Anwar Hussain at 11.30 P.M. Sri A.K. Porwal (P.W. 11) the Presiding Officer at Lairo Polling Station stated that at about 4.15 P.M. 15-20 persons tried to disturb the polling and indulged in violence and marpit in which he was also assaulted. The incident lasted for 3 minutes and there was interruption of polling for ten minutes. Except for this disturbance the polling was peaceful. In cross examination he stated that from 8 A.M. to 4.15 P.M. there was no interruption in the voting. There was some sort of disturbance of which notice was taken and intimation was sent to the police station but the police aid could not come before 4.15 P.M. but the situation was controlled by him personally. Thereafter voting started again and continued up to the scheduled time peacefully. The voters who had come to cast the vote did so. He further stated that the polling agents of all the candidates were present at the polling station but none of them told him about the identity of the persons who had created disturbance. The witness stated that he did not know Kedar Singh Ex. Block Pramukh. According to this witness the commotion at the polling station was due to the fact that a large number of voters had assembled and were trying to form a queue but the police was not able to

control and it was for that reason that he sent for police help. Nanku Yadav (P.W. 16) claimed that he went to cast his vote at 11-12 noon and joined the queue. At about 2.30 or 3 P.M. Jharkhandey Rai, Kedar Singh, Paras Nath Yadav, Balli Yadav, Bal Krishna Yadav, Murlidhar, Surya Bali and Sugriv came at the polling station on a jeep. Jharkhandey Rai went to his camp and had a talk with his workers for about half an hour. He sent Murlidhar inside the polling station from where he came back with Paras Nath Yadav. Jharkhandey Rai had a talk with him and made enquiries from Kedar Nath and others about the position at the polling station who informed him that Congress (I) was fairing better. Kedar Singh who was armed with a gun and others who were armed with lathis then sent to the voters and asked them to go away otherwise they would be gunned down. The voters standing in the queue moved away by about 100-200-300 yards. Jharkhandey Rai left the place in the jeep and other persons went outside the polling station. The voters again formed a queue. Kedar Singh and others came back again entered the polling station and assaulted the Presiding Officer. The voters fled away. The witness did not cast his vote. A Jawan of the Home Guard called the police and when the Sub-Inspector arrived persons who were standing outside cast their votes. According to this witness, the polling remained suspended for about one and a half hours. In cross-examination the witness stated that when the persons present in the queue told Kedar Singh and others that they would vote for the party which they liked Kedar Singh and other became silent and returned to their camp. They had further talks with Jharkhandey Rai about half an hour and then Jharkhandey Rai left the place. There after Kedar Singh and Paras Ram came to the place where the voters were standing in the queue and threatened them to go otherwise they will be gunned down which led to a lot of termoil. According to him, no police man was present when the termoil took place. The witness stated that on the first occasion he remained in the queue from 11-12 noon till 3.15 p.m. and again came back to cast his vote at 4.00 p.m. but could not cast his vote. Dinesh Singh (P.W.17) stated that he went to the polling station to cast his vote at about 2.30-3.00 p.m. There were 150-200 persons standing in the queue. At that very time Jharkhandey Rai came in a jeep to his camp and sent a man to call Paras Nath Yadav with whom he conversed in the camp which the witness could to hear. Thereafter, Kedar Singh and Paras Nath Yadav, Balli and Sugriv came near the queue and enquired from those present as to which party they would vote. The voters replied that they were voting for the Congress (I) party. Kedar Singh and others then returned to the camp. After half an hour they appeared again and at the same time Jharkhandey Rai left the place in his jeep. Kedar Singh was armed with a double barrel gun and others were armed with lathes. They started abusing the voters and asked them

to leave on the threat of being shpt-dead. They also assaulted a couple of persons there whereupon the voters dispersed. Kedar Singh and others then entered the polling station but the witness was not able to see what happened inside though he heard a lot of commotion inside the room. In the cross examination it was elicited that his uncle one Kedar Singh was elected to the U.P. Legislative Assembly on Congress (I) ticket. The witness was doing contract work in the irrigation department. He denied the suggestion that the contract work was procured since his uncle was a M.L.A. and Sri Kalpa Nath Rai was a M.P. According to this witness when he was standing in the queue Nanku Yadav was also standing in the queue. The witness could not hear the talk that took between Jharkhandey Rai and Paras Nath Yadav.

Jharkhandey Rai (R.W. 1) in his statement denied that he visited Lairi on the date of poll. He also denied having heard that any marpit took place at that polling station or that he instructed his workers to prevent the voters of the Congress (I) candidate from exercising their franchise. According to this witness polling in the entire constituency was peaceful. In his cross-examination, he, however, admitted that in the course of counting of votes he had received information that some disturbance had taken place at polling station Lairi with regard to formation of queue for the purpose of voting. He specifically denied that on the date of poll he alongwith Kedar Singh and others went to polling station Lairi and there with his consent Kedar Nath Singh, Paras Nath Yadav and others threatened the voters, the Presiding Officer of the polling station and captured the booth.

Kedar Nath Singh (R.W. 3) stated that he reached Lairi Polling Station at about 1 p.m. and found the voters restless as the polling was very slow and that after pacifying the voters he left for Kasara at about 1.30 or 2 p.m. and from there he left for Bholabandh polling station where he cast his vote and remained there till the poll was over and then stayed at his residence in the night. He denied having carried any arms. According to this witness section 144 Cr. P.C. had been in force. He denied that he and Jharkhandey Rai and other workers of the C.P.I. decided to create trouble or indulge in violence to prevent the Congress (I) voters from exercising their right of franchise. In his cross-examination he stated that there were two polling booths at polling station Lairi. The polling was allow with the result that there was discontentment amongst the voters and that several voters were being sent back without voting on the ground that their names did not find place in the electrol rolls. He denied the suggestion that when he came to know that more votes were

being cast in favour of petitioner, he and his companions threatened the voter. He denied to have entered the polling station with Paras Nath Yadav and others and slapped the Presiding Officer.

Paras Nath (R. W. 4) worked as the polling agent of Shri Jharkhandey Rai at polling station Lairo. He stated that when he went outside the room he came to know that several voters were not being allowed to cast their votes on the ground that their names did not exist in the voters' list. A complaint about that was made to the Presiding Officer. Shri Porwar went outside, talked to constable Yudhisthir Rai who was posted at the polling station and then told the witness that he would take into the matter as it was his concern. The witness denied that any one assaulted Sri Porwar in the room where the witness was sitting. He specifically denied that Sri Kedar Singh Ex-Block Pramukh met him at the polling station. According to this witness no disturbance took place regarding formation of queue of voters from the beginning to the end of the poll at booth no. 2 Those voters who were not allowed to vote went outside the room and thereafter they talked about the matter amongst themselves.

From the testimony of the witness examined by the parties I am not satisfied that any undue influence was exercised by the contesting respondent, his agents and workers. From the statement of Sri A.K. Porwal (P.W. 11), the Presiding Officer Lairo polling station, it appears that as about 4.15 p.m. 15-20 persons tried to disturb the polling and indulged in some Marpit in which the Presiding Officer was also assaulted. This incident according to A.K. Porwal lasted about for three minutes resulting in interruption of polling for about ten minutes. For the rest of the period polling was peaceful. He further stated that polling agents of all the candidates were present at the polling station but none of them told the identity of the person who had created the disturbance. Constable Yudhisthir Rai who was posted at Lairo polling station also stated that voting continued peacefully. At 2.30 p.m. some persons entered the polling station and started belabouring the Presiding Officer and voters started running away. He named Kedar Singh as one of the persons who created disturbance. The witness claimed that he pushed out the persons who were creating disturbances and voters came back and cast their votes peacefully. This witness admitted that he did not see Kedar Singh and his companions entering the room where the Presiding Officer was sitting. If Kedar Singh was armed with a gun and his associates were armed with lathis and they threatened the voters which made them to run away as alleged by Nanku Yadav (P.W. 16) and Dinesh Singh (P.W.17) Yudhisthir Rai would not have failed to

notice and mention this fact in his deposition. If Kedar Singh was amongst the persons who created disturbance inside the room where the Presiding Officer is said to have been assaulted polling agent of the Congress (I) party would not have failed to name him to the Presiding Officer. Kedar Nath Singh seems to have visited the Lairo polling station once at about mid day but I am not prepared to believe that he and his companions were armed and threatened the voters or were responsible for creating any disturbance. Some disturbance appears to have been caused because of the dissatisfaction of the voters, may be, on account of slow voting but responsibility for that disturbance cannot be fastened on Kedar Nath Singh or his associates. It is in evidence that section 144 Cr.P.C. had been promulgated as is always done at the time of voting and Sector Magistrates were making round of the area. Kedar Nath Singh and others could not have had courage to move about armed with gun and lathis and threaten the voter. I am also not prepared to believe that the voter would have told Kedar Nath Singh and his associates that they were voting for the Congress (I) Party and the entire allegation that Kedar Nath Singh and his associates threatened the voters at Lairo and indulged in violence in baless if any such thing had taken place complaints would have been made to the Presiding Officer and other concerned authorities immediately.

Chandanpura is another place where undue influence is said to have been exercised by the agents and workers of respondent no. 1 with the consent of respondent no. 1 details of which are set out in paragraphs nos. 8 (j) to 8(p) the petition which have been summarised earlier in the judgment. The petitioner examined Mohammad Affah (P.W. 1) Safiullah (P.W. 2), Anwar Husain Khan (P.W.4) and Ainul Haq (P.W. 10) in support of the allegations made and also placed reliance on the first information reports lodged by Ainul Haq (Exp. 2) and Anwar Husain (Ex. P. 3A). Mohammad Affah (Exp. P.W. 1) a resident of Mohalla Chandanpura stated that Jharkhandey Rai visited Chandanpura mohalla a day before the date fixed for poll. He went to the house of Abdul Awwal at about 8.30 p.m. where the witness claimed to be present. Jharkhandey Rai on being informed by Abdul Awwal that there was less support for his party instructed his workers to see that votes meant for his party were polled upto 12.00 noon and thereafter hindrance may be created so that votes could not be easily polled. He instructed that polling of votes has to be prevented even if it leads to violence. At that place Iqbal, Kedar Nath Singh, Abdul Awwal, Subhash Yadav and Amber alias Akhtar were also present. In cross-examination, the witness stated that he had not made any note of the date and the time of visit of respondent no. 1 but he remembered it as it was a day before the polling date.

It is significant that in the petition no allegation has been made that Jharkhandey Rai visited Chandanpura a day before the date of poll and instructed his workers to prevent polling after 12.00 noon even if it led to violence. Jharkhandey Rai in his deposition expressly denied to have gone to the house of Abdul Awwal a day before the date of poll alongwith Kedar Singh and others. I am not prepared to believe that the respondent no. 1 would have openly given instructions as stated by Mohammad Affan. His testimony does not inspire confidence.

Safiullah (P.W.2) claimed to have reached Chandanpura polling station at 12.30 or 1 p.m. after casting his vote at another polling station just to watch Tamasha. According to his witness while he was still at Chandanpura polling station Kedar Singh alone arrived there. He was informed by the supporters of his party that the position of their party was weak. Thereafter Kedar Singh instructed them to create such a situation that further polling may not be possible. Amber Husain was present there armed with a gun. On his inquiry the voters standing in the queue told him that they were voters for Congress (I) candidate. Thereupon he threatened the voters who started running away and only two or three persons remained. Kedar Singh had also threatened that he would shoot them down if they voted for Congress (I). The witness stated that a couple of constables were present there. Cross-examined the witness stated that on returning to his house he told a large number of persons about the threats extended to the voters but could not recall any name and that he did not convey the information to any Congress (I) leader. He denied knowledge if any polling agent of Congress (I) was present at Chandanpura polling station and stated that no Congress (I) leader or worker came to the voters who were standing in the queue to persuade them to stay on and cast their votes. The number of persons standing in the queue must have been about 200 and practically all of them started running away. The witness pleaded ignorance whether any polling officer was present at the polling station. According to the witness this incident had taken place at 1.30 p.m.

Anwar Husain (P.W. 4) stated that he went to the polling station at about 1 p.m. and soon thereafter a group of workers of the Communist Party of India led by Kedar Singh, Iqbal and Paras Yadav arrived at the scene. Kedar Singh threatened the persons standing in the queue saying that they were supporter of Congress (I) and they must refrain from voting. Whereupon the voters including the witness ran away from the place without casting their votes. He further stated that Ainul Haq came to his house at about 4-5 p.m. and then he went to the polling station again and stood in the queue. At that stage again Kedar Singh, Paras,

Iqbal and Ambar Husain and others appeared on the scene. They chased Ainul Haq and again the voters started running away. There were about 200-300 persons in the queue. The presiding officer had declared that those who were standing in the queue will be allowed to vote even if the hour for polling had expired. He and Ainul Haq hid themselves in his house. Kedar Singh and his companions then came to his house and started breaking the door and the glasspanes. They also damaged his tempo standing in front of the house. The witness lodged a report of the incident at the police station at about 7.30 P.M. The witness clarified that the incident at the polling station had taken place at 7 P.M. and the incident at his house took place half an hour later. In cross-examination the witness stated that the police constables and the polling staff who were present there tried to prevent Kedar Singh and his companions for creating mischief but the group of Kedar Singh was so large that these persons proved ineffective. According to this witness, the number of persons with Kedar Singh were not 8 or 10 but Kedar Singh was accompanied by a large number of persons. The witness admitted that workers of the Congress (I) party were present at the polling station when the incident took place. According to the witness two incidents had taken place, one at about 1.30 and the other at about 7 P.M. when the voters were threatened and they ran away.

Sri Ainul Haq (PW. 10) stated that he went to Chandanpura polling station at 2.30—3.00 P.M. There he learnt that the booth had been captured and the voters scared away by Kedar Singh, Iqbal Ahmed and others. The witness then collected the voters of his mohalla and brought them to the house of Anwar Husain from where he took all of them including Anwar Husain to the polling station at about 5 p.m. The voters were asked by the polling officer to stand in a queue. There were about 150—200 voters in the queue. Only 10—12 votes had been cast when Kedar Singh, Iqbal Ahmad, Ambar Husain etc. again arrived on the scene, captured the booth and threatened to shoot down the witness, whereupon he and the voters ran away. The witness ran away to the house of Anwar Husain. Kedar Singh and his companions numbering about 200 surrounded the house of Anwar Husain and caused damage to it. From the house of Anwar Husain the witness went to the police station and lodged the report (ex. P. 2). He also informed about this incident to his leaders the same night at 9.30 P.M. Cross-examined the witness stated that when he reached Chandanpura polling station he learnt about the earlier incident. At that time no person was present at the polling station. According to this witness Anwar Ahmed was the Congress (I) polling agent at Chandanpura polling station. Abdul Nazir and others Congress (I) workers were deputed at that polling station but only

Anwar Ahmed was present when the witness reached there. He did not see either the polling officer or the Presiding Officer there. Only 4-5 home guards were present at the scene but no police men were present. He however, admitted that when the voters were running away the Presiding Officer was present at the polling station.

It is significant that in the petition there is no mention of any such incident to have taken place at 1 or about 1.30 P.M. The petition speaks only of an incident at 7.30 P.M. Evidence of Anwar Husain and Ainul Haq with regard to the incident at 1.30 P.M. must be discarded on this round alone. Moreover, I am not prepared to believe that in the presence of the constables posted at the polling station Kedar Singh or Ambar Husain would have gone there armed with guns and threatened 200 voters to shoot them down if they voted for Congress (I) candidate. I am also not prepared to believe that there were no polling officer or any Presiding Officer present at the polling station. Admittedly, these witnesses made no complaint to the authorities concerned about the incidents. Had the incident taken place as alleged either they or other workers of the Congress (I) party must have made a complaint to that effect to the Presiding Officer. The police and the guards present there also must have taken some action if the alleged incidents had taken place. For these very reasons the testimony of Anwar Husain and Ainul Haq with regard to the incident at the polling station at about 7 P.M. cannot be accepted. Ainul Haq (P.W. 10) went to the length of alleging that the both had been captured first at 1.30 P.M. and then again at about 7 P.M. which is not the case put forward in the petition. He appears to be an over-zealous witness. For the reasons set out above I am not prepared to place reliance on any one of these witnesses with regard to the incidents alleged to have taken place at Chandrapura polling station. The story of capturing of the booth at Chandrapura by Kedar Singh and his associates once at about 2—2.30 P.M. and then again in the evening introduced by Ainul Haq (P.W. 10) in his statement does not deserve any serious consideration as no plea was raised in the petition with regard to booth capturing at Chandanpura. In paragraph 8(t) it was stated that the agents and workers of respondent no. 1 with the consent of the said respondent no. 1 restored to booth capturing at various polling stations. The names of the polling stations and the names of the agents and workers of the respondent no. 1 who prevented the voters from voting and or captured the polling stations were set out in Schedule 1 to the petition. Chandanpura does not find a place in the said schedule.

The case set up by the petitioner that on account of the threats examined by the supporters of the contesting respondent Ainul Haq (P.W.10) and Anwar Husain (P.W. 4) took shelter in the

latters house which was surrounded by about 200 persons belonging to the respondent party who broke open the doors of the Anwar Husain's house and damaged his property about which two reports were lodged at the police station, may now be examined. The report (Ex. p-2) was lodged by Ainul Haq at 7.45 P.M., the report (Ex. p. 3A) by Anwar Husain was lodged at 11.30 P.M. the same day. In the report lodged by Ainul Haq it is stated that when he was standing in the queue to cast his vote he was accused of carrying on propaganda for the Congress (I) party which he was asked to stop otherwise he would be killed. This led to some verbal altercation and a large number of persons collected. Finding the atmosphere hot he started running being chased by the accused and took shelter in the house of Anwar Khan. The crowd started pelting brick-bats and started breaking open the door. The miscreants entered the house, damaged and looted some properties. In the report lodged by Anwar Husain the story put forward is the complaint had gone to cast his vote at Shishu Mandin Mohalla Chandanpura. There he heard a lot of shouting, sound of pelting brick bats and gunfire. He came back running and saw the accused of whom Ambar Husain and Abdul Awwal armed with guns exhorting their companions to loot all the articles. The miscreants then entered the house and looted various items set out in the report and caused damage to the auto rickshaw. In the report lodged by Ainul Haq there is no mention of any firing etc. or even the fact that anyone was present armed with gun. From the statement of Ainul Haq made in court it appears that he collected the voters of the Mohalla and brought to the house of Anwar Husain and from there they all, including Anwar Husain, went to the polling station but from the statement of Anwar Husain (P. W. 4) it appears that he and Ainul Haq were standing in the queue when Kedar Singh, Paras, Iqbal, Ambar Husain and others appeared on the scene and chased Ainul Haq. There is no statement to the effect that at that stage these persons accused Ainul Haq of doing propaganda for the Congress and threatened to kill him if he did not stop it. Similarly, Anwar Husain did not state that he heard a lot of shouting and sound of brick-batting and firing in the air when he was standing in the queue at the polling station. In Court. he stated that his report was lodged at about 7.30 P.M. The report (Ex. p-3A), however, indicates that in fact it was lodged at 11.30 P.M. It appears to be belated report, the police station being only two furlongs away. From the statement of Ainul Haq (P.W.10) it appears that the house of Anwar Husain was only ten paces away from the police station. If any incident of firing, brick-batting and looting etc. had taken place the police stationed at the polling station would not have remained unaware of it and must have taken some action. The police station being only two furlongs away additional

police force could have been available from there. The Presiding Officer and other authorities at the polling station would have immediately learnt of the incident and taken necessary steps. I am not satisfied on the material available on the record that any incident as alleged by Ainul Haq and Anwar Husain took place at the house of the later. The reports appear to have been lodged by way of pashbandi.

In my opinion, the petitioner has failed to establish that respondent no. 1, his agents, workers and other persons with the consent of respondent no. 1 committed any corrupt practice as contemplated by section 123 (2) of the Act. Issue no. 1 is decided in the negative.

Issue No. 3

Allegations in the petition which gave rise to this issue are contained in paragraphs 8(H), 8(i) and paragraphs 10(a) to 10(c) of the petition. It is alleged that respondent no. 1, his agents and workers with his consent distributed throughout the constituency and particularly in the area falling under police station Kopaganj and in Mau Nath Bhanjan a pamphlet in Urdu under the 'MUSALMANON HOSHIYAR' CONGRESS MUSALMANON KI DOST HAI YA DUSHMAN ?" This pamphlet contained extracts from the purported speeches of Smt. Indira Gandhi the President of the Congress (I) party and Sri Sanjay Gandhi and also have reference to certain news papers. The said extracts purported to be the utterances of Smt. Indira Gandhi and Sri Sanjay Gandhi regarding the attitude and reaction of Muslims in India relating to Bangla Desh, Aligarh Muslim University and family planning etc. Copy of one such pamphlet (Ex. p-5) is annexed as Annexure-1 to the petition. It is alleged that this pamphlet was used to excite the feelings of the Muslim voters and on its basis the Muslim workers of the petitioner were exhorted not to work or vote for the petitioner. In paragraphs 10(a) to 10(c) it is alleged that the Communist Party of India, which had set up the respondent no. 1 as a candidate, believes in promoting class struggle to achieve power. The Lok Dal which was an electoral ally of the respondent no. 1 in this election also prompted casteism in the name of injustice to the so called backward communities. In order to win the votes of the backward communities in his favour for furthering the prospects of his election and for prejudicially affecting the prospects of the petitioner, the respondent no. 1, his agents and workers with his consent promoted and attempted to promote feelings of enmity and hatred between members of the backward communities, namely, Ahirs, Kurmis etc. on one hand and the Brahmins and Thakurs on the other on the ground of caste and communities. With this and in view they distributed a pamphlet in those parts of the constituency which were predominantly inhabited by

the members of the backward communities. This pamphlet contained an appeal to the voters belonging to the backward communities not to vote for the petitioner and to vote in favour of the respondent no. 1. The particulars about the date, time and place of distribution of the said pamphlet and the agents and workers of the respondent no. 1 who distributed the same with the consent of the respondent no. 1 have been set out in schedule II of the petition.

The aforesaid allegations have been denied by respondent no. 1 in his written statement. It has been asserted that respondent no. 1, his agents or his party had no concern with the pamphlet in Urdu under the heading 'MUSALMANON HOSHIYAR'. This pamphlet was connected with one Dr. Upendra Singh of Ghosi who was supporter of the respondent no. 5 and he had no concern with the respondent no. 1 or his party. It has further been asserted that respondent no. 1, his agents and workers had no concern with the aforesaid pamphlet. They did not distribute the pamphlet nor they had excited the feeling of the Muslim voters in any manner on the basis of contents of the said pamphlet. They had also not exhorted the Muslim voters or the Muslim workers of the petitioner not to work or vote for the petitioner. The allegations contained in paragraphs 10(a) to 10(c) of the petition have also been denied. It is asserted that the Lok Dal was not an electoral ally of respondent no. 1 who contested the election as the candidates of Communist Party of India. On account of seat adjustment Lok Dal did not set up its own candidate against the respondent no. 1. Respondent no. 1, his agents and workers with his consent did not promote or attempt to promote the feeling of enmity and hatred between the backward communities and the Brahmins and Thakurs on the ground of caste and communities. Respondent no. 1 denied that he, his agents and workers with his consent distributed a pamphlet in the constituency dominated by the backward communities nor did they canvass the persons of the backward communities to vote for respondent no. 1 on the ground that the backward people were exploited by the Brahmins and Thakurs and they were victimised so they should vote for the petitioner who belonged to Congress (I) party which is controlled by Brahmins and they were enemies of the backward communities. As regards the pamphlet it is asserted that the allegations are vague and it has been manufactured for the purpose of the election petition. With regard to Schedule II the stand taken is that it is vague and lacks material particulars.

With regard to Urdu pamphlet (Ex. p-5) it may be pointed out at the very outset that in the petition there is no averment as to who published and

printed the pamphlet. The only allegation is its distribution by respondent no. w his agents and workers. A vague allegation has been made that it was distributed throughout the constituency particularly in the area falling under police station Kopaganj and in Mau Nath Bhanjan. The date and time of the distribution and the persons who did it has not been set out in the petition.

The petitioner examined Abdul Muid (P.W.12), Mohammad Masood (P.W. 13) and Qamrul Hasan (P.W. 14) in support of its case regarding the distribution of pamphlet (Ex. p. 5). Abdul Muid a resident of village Kurthi Jafarpur, P.S. Kopaganj, stated that there were about 4000 voters in his village of whom about 70 per cent were Muslims. According to this witness Jharkhandey Rai visited the village about a week before the date of poll and addressed a meeting at about 6 P.M. at the house of a rise in which only Muslims had been invited. Sri Iqbal, Chairman of the Town Area Kopaganj introduced Jharkhandey Rai who addressed the meeting and then himself distributed a pamphlet similar to Ex. p-5. The witness admitted that he belonged to the Congress (I) party and worked with Sri Kalpa Nath Rai. He further stated that although it was known that he belonged to the Congress (I) party yet he was invited to that meeting with a view to persuade him to vote for Sri Jharkhandey Rai. The witness admitted that he did not send any complaint to the Election Commission about this pamphlet. He only complained to Sri Khandelwal and Sri Awadesh Raj and did not even complain to Sri Kalpa Nath Rai.

Mohammad Masood (P.W.13), a resident of village Adri, P.S. Kopaganj, stated that there were about 4000 voters in this town area of whom more than fifty per cent were Muslims. According to this witness a meeting was held at the Baithak of Ismail 4-5 days before the polling day which was attended by Jharkhandey Rai, Iqbal Husain Chairman, Amber Husain Vice Chairman and Ex-Block Pramukh Kedar Nath Singh and about 100 muslims of the village. Jharkhandey Rai told the meeting that Congress (I) party was anti muslims. It was responsible for the creation of Pakistan and Bangla Desh and had also taken in its hand the administration of the Aligarh Muslim University. After his address pamphlets were distributed which were similar to Ex. p. 5. In his cross-examination the witness stated that he had no interest in politics and never contested any election not even the Gaon Panchayat election. The reason why he attended this particular meeting was that it was confidential meeting and Muslims were invited to attend it. He admitted that he did not attend any other meeting of similar nature.

Qamrul Hasan (P.W. 14), a resident of Katra Mau Nath Bhanjan stated that the number of voters in Mau Nath Bhanjan is about 45000 to 50,000 and 80 per cent of the voters were Muslims. According to this witness a meeting was held at 7.30 P.M. about 6 or 7 days before the date of poll at the house of Safur Rahman in which only Muslims were present. Except for Sri Jharkhandey Rai even those who addressed the meeting were Muslims. After delivering the speech Jharkhandey Rai himself distributed pamphlets similar to Ex. p. 5 to each and every person present there. In cross-examination the witness also stated that he did not remember the date and time of any other meeting during the election period.

Jharkhandey Rai in his statement stated that he never held any meeting of any community. He always convened the meetings comprised of persons of all religions and walks of life. He denied that any pamphlet similar to Ex. p. 5 was read out or distributed in any meeting which he had addressed. He denied that he knew any person named Safur Rahman of Mau town. He reiterated that he did not address any meeting in Mau which was attended only by Muslims nor did he address any such meeting at Adir Bazar of Kurthi Jafarpur.

I am not impressed by the testimony of the aforesaid witnesses examined by the petitioner. Abdul Muid did not even name to raise at whose house the meeting of Muslims is alleged to have been held in village Kurthi Jafarpur, although he himself was a resident of that village. On his own admission he belonged to the Congress (I) party and had worked for Kalp Nath Rai. It is doubtful if such a person would have been invited to attend that meeting if it is assumed that such a meeting was held. If any pamphlet had been distributed as alleged complaints about it would have been made to the authorities concerned. Mohammad Masood admitted that he had no interest in politics and he did not attend any other meeting addressed by Jharkhandey Rai and others. It is difficult to accept that he would have been invited to attend his meeting and in spite of his disinterestness he could remember the date, time and place of the meeting after a lapse of over 2½ years. Qamrul Hasan (P. W. 14) admitted that he did not remember the date and time of any other meeting during the election period. He did not point out any special reason why he remembered the date and time of this particular meeting alleged to have been addressed by Jharkhandey Rai. It appears highly improbable that Jharkhandey Rai himself would have distributed the pamphlets when services of his supporters were available for that purpose. The persons at whose residences meetings in Kurthi Jafarpur Adri and Mau town were held have not been examined to land support to the witness referred to above. I am inclined to

believe Jharkhandey Rai that he never addressed any meeting comprised of only one community.

Apart from the fact that the witnesses examined by the petitioner do not inspire confidence, the case set up by the petitioner deserves to be rejected on the ground that the petitioner did not furnish particulars of the meeting which were addressed by Jharkhandey Rai or his workers and where pamphlets like Ex. p. 5 were distributed. If as stated by the petitioners witnesses, the pamphlets were distributed 6-7 days before the date of poll the matter about the pamphlet should have been brought to the notice of the authorities concerned which was admittedly not done. It was not brought even to the notice of the party organisation to enable it to take suitable steps in time.

I am also not satisfied that the contents of the Urdu pamphlets (Ex. p. 5) promote or attempt to promote feelings of enmity or hatred between different classes of the citizens of India on the grounds of religion etc. The pamphlets contain extracts from speeches or writings of certain leaders. The object of the author of the pamphlet appears to be to point out that the interest of the Muslims is not safe in the hands of the Congress (I) party. It does not appear to promote or attempt to promote feelings of enmity or hatred between Muslims and non-Muslims and thus falls outside the ambit of section 123(3A) of the Act.

The petitioners case based on the Hindi pamphlets (Ex. p. 3 and p-4) is still more unsatisfactory and unconvincing. Ex. p. 3 purports to have been issued by the Ghosi parliamentary Election Committee of the Communist Party of India on Ex. p-4 purports to have been issued by Jharkhandey Rai himself. The contesting respondent has denied the allegations contained in paragraphs 10(a) to 10(c) of the petition. It has been asserted that respondent no. 1, his agents or workers did not distribute any pamphlet in the constituency dominated by the backward community nor did they canvass the backward community to vote for respondent no. 1 on the plea that the backward people were exploited by the Brahmins and Thakurs and as they were victimised by them they should not vote for the petitioner who belong to the Congress (I) party which was controlled by Brahmins and they were enemies of the backward communities. It was asserted that the pamphlets were manufactured for the purposes of the election petition.

None of these pamphlets were annexed to the election petition, but were brought on record subsequently. Paragraph 10(b) of the petition talks of distribution of a pamphlet in those parts of the constituency which were predominantly inhabited by the members of the backward communities. Schedule II contains the date, time and place of the

distribution of the pamphlet and the person who distributed it. According to the schedule it was distributed by Sri Ram Janam Yadav Ex. M.L.A. on 31-12-1979 at Urdia, Hyderabad, Chanko, Lalghat and Jhakahra between 5 P.M. and 7.30 P.M. Subhash Yadav did the distribution work on the same day between 5 P.M. and 8 P.M. at Sunraich, Bala Bhandha Dhagoli, Gonarpur, Koriapar and Ragholi. No evidence has been produced regarding the distribution of the pamphlet by Ram Janam Yadav at the places mentioned in the schedule. Sri Ram Yadav (P.W. 9) has been examined to prove the distribution of the pamphlets at village Sunraish, Ravindra Nath Tripathi (P.W.6) for distribution of the pamphlets at village Dhagoli, Lalan Singh (P.W. 7) for distribution of the pamphlets at village Gonarpur, Mithai Lal (P.W.8) and Ram Dhani Yadav (P.W.15) for distribution of the pamphlets at Koriapar. No witness has been examined to prove the distribution of the pamphlets at Bala Bhandha and Nagholi. According to Sri Ram Yadav (P.W.9) a meeting, which was not preplanned, was held at 5 P.M. on 31-12-79. Jharkhandey Rai, Subhash Yadav and Kedar Singh came in a jeep. Jharkhandey Rai addressed the meetings for two minutes then he gave pamphlets to Subhash Yadav who distributed them. The witness was not able to recall any meeting which was held in his village and he did not talk about the distribution of the pamphlets to anyone till his statement in Court. Ravindra Nath Tripathi, (P.W. 6) stated that the meeting was held on 31-12-1979 at 6.30 P.M. which was attended by Sri Jharkhandey Rai, Subhash Yadav, Zafar Azmi, and Kedar Nath Singh who arrived there in a jeep. The meeting was not preplanned and was held near a tube well. It lasted for about ten minutes. After addressing the meeting Jharkhandey Rai took out several bundles of pamphlets which he handedover to Subhash Yadav, Jafar Azmi and Kedar Singh but the pamphlets were distributed by Subhash Yadav alone. The witness handed over the pamphlets to Kalba Nath Rai the same day at 8P.M. The witness belonged to Congress (I) party. Lalan Singh (P.W. 7) stated that the meeting was held in his village on 31-12-1979 at 7 P.M. There was no prior publicity for this meeting which was addressed by Sri Jharkhandey Rai who had come in a jeep along with Subhash Yadav, Kedar Singh and Jafar Azmi. The meeting was held near a tube well. It lasted for about ten minutes. After addressing the meeting Jharkhandey Rai took out some pamphlets from the jeep which Subhash Yadav distributed. The witness could not recall anything that may have happened on 31-12-1979. He admitted that he did not have any watch at that time but gave out the time of his arrival at the meeting as 7 P.M. and the time of distribution of the pamphlets at 7.12 P.M. Mithai Lal (P.W.8) gave the time of the meeting held in his village as 7.30 P.M. There also it was held near a well. It lasted for about ten minutes and after the meeting

pamphlets were distributed by Subhash Yadav. Ram Dhani Yadav (P.W. 15) a resident of village Barjala came by chance to be present in the meeting at Koeria which was one mile away from his village. According to this witness Jharkhandey Rai himself distributed the pamphlet (Ex. p. 4) and also got distributed through his worker. Jharkhandey Rai spoke at the meeting for about ten minutes. According to these witnesses none of the meetings were preplanned. They lasted for about ten minutes in which Jharkhandey Rai alone spoke and after his speech he himself took out the pamphlets from the jeep and got it distributed through Subhash Yadav. At Koeriapar, according to Ram Dhani Yadav (P.W. 15), the pamphlets were distributed by Jharkhandey Rai himself and other workers. The meeting at Sunraich was held at 5 P.M. and thereafter with a gap of half an hour at other places. The duration of the meeting in each case was almost the same. The statements of the witnesses are so mechanical that they appear to have been prepared on the same pattern of evidence and thoroughly tutored before being examined in Court.

Jharkhandey Rai in his statement expressly stated that he did not get Ex. p. 3 and Ex. p. 4 published or distributed in any meeting. The witness stated that he saw them for the first time in court and they had not come to his knowledge earlier. He asserted that he never canvassed on the basis of the caste or creed and rich or poor as it was against the tenets of his party and he personally did not believe in these factors. He sought one vote of the poor on the basis of the philosophy of have and have nots. Questioned about the meeting held at the bute well of Ravindra Nath Tripathi in Dagauli he denied to have held any meeting there. The witness does not appear to have been specifically questioned about other meetings where Ex. p. 3 and p. 4 are alleged to have been distributed.

Kedar Singh (R.W. 3) who is said to have accompanied Jharkhandey Rai to the aforesaid meetings stated that he saw Ex. p. 3 and p. 4 for the first time in Court. According to this witness a public meeting was held at Koeriapara about 2 or 3 weeks from the date of the poll. In that meeting Subhash Yadav was not present. He denied that pamphlet Ex. p. 3 and Ex. p. 4 were got printed and distributed by respondent no. 1 and added that these pamphlets were got printed and distributed by Ram Gopal Khandelwal. Further questioned the witness denied that respondent no. 1 he and other workers of the party held a meeting 3-4 days before the date of poll at Koeriapar at about 7.30 P.M. where they appealed to the backward classes to rise against upper classes or distributed Ex. p. 3. No specific question appears to have been put with regard to the meetings held at other villages on that

date where the pamphlets are alleged to have been distributed.

It is significant that in the petition only one Hindi pamphlet was referred to and even that was not annexed to the petition. At the trial the witnesses introduced two pamphlets (Ex. p-3) and (p-4). In the petition it was not indicated whether the pamphlet contained an appeal made by the party or by the candidate himself. In the petition it was also not stated that the pamphlets were distributed after a speech by Jharkhandey Rai. The contents of the pamphlets as set out in paragraph 10(b) of the petition do not appear to be a faithful translation of any one of the pamphlets. In none of the pamphlets it is stated that it was the religion of every member of the backward community to see that the women belonging to the Brahmins and Thakur families were married, if necessary forcibly, to the men of the backward communities and made to serve in their houses. The pamphlets do not contain any statement to the effect that the Congress (I) party was controlled by Brahmins at the Centre, in the State and the district. Paragraph 10(b) of the petition does not appear to be a reproduction of any one of these pamphlets. It may be, as suggested by the respondent, that these pamphlets came into existence subsequently for the purposes of the election petition. It was urged that Kedar Singh (R.W. 3) admitted the existence of these pamphlets and their genuineness could not be doubted. I find no substance in the contention. Kedar Singh in fact in his examination-in-chief stated that he had not seen Ex. p. 3 and p. 4 earlier and had seen them for the first time in Court. In cross-examination he stated that as a matter of fact the pamphlets were got printed and distributed by Ram Gopal Khandelwal. That statement has to be accepted as a whole or not at all. The Supreme Court in *Hanumant Govind Nargundkar and another Vs. State of Madhya Pradesh* (A.I.R. 1952 Supreme Court 343) laid down the principles regarding admission thus :

“It is settled law that an admission made by a person whether amounting to a confession or not cannot be split up and part of it used against him. An admission must be used either as a whole or not at all”

In *Balvinder Kaur Vs. The State of Punjab* (I) (A.I.R. 1952 Supreme Court 354) the Supreme Court observed as follows :

“The court thus accepted the inculpatory part of that statement and rejected the exculpatory part. In doing so it contravened the well accepted rule regarding the use of confession and admission that these must either be accepted

as a whole or rejected as a whole and that the Court is not competent to accept only the inculpatory part while rejecting the exculpatory part as inherently incredible.”

The same principle has been enunciated in *Dadarao Vs. State of Maharashtra* (A.I.R. 1974 Supreme Court 388) and *Haji C. H. Mohammad Koya Vs. T.K. S.M.A. Muthukoya* (AIR 1979 Supreme Court 154). The petitioner cannot possibly derive any advantage from the so called admission made by Kedar Singh.

In my opinion, the petitioner has miserably failed to prove that respondent no. 1, his agents and workers and other persons with the consent

of respondent no. 1 committed corrupt practice under section 123 (3A) of the Act. The issue is decided in the negative.

In view of the findings recorded on issues nos. 1 and 3 the petition fails and is dismissed with costs to respondent no. 1 which is assessed at Rs. 2,000.

Dated : 5-5-83

[No. 82|UP|6|80-(Alld)]

DHARAM VIR, Under Secy.

Election Commission of India.